

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
Government Affairs

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WASHINGTON, D.C. 20062-2000
202/463-5310

March 21, 2003

The Honorable John Ensign
United States Senate
364 Russell Office Building
Washington, D.C. 20510

Dear Senator Ensign:

On behalf of the U.S. Chamber of Commerce, the world's largest business federation representing more than three million businesses of every size, sector and region, I am pleased to offer our support for S. 607, the "Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act of 2003." Reforming our medical liability system is a top health care priority for employers in their efforts to contain costs, improve quality and ensure the availability of services and coverage. We applaud your leadership on an issue that has reached a point of crisis across the nation.

Increasing numbers of physicians, hospitals, and other providers are curtailing their practices, relocating to other states, or simply ceasing to offer medical services altogether. This loss of medical resources will have a serious and detrimental long-term impact on local economic development. Without access to practicing physicians and high quality medical facilities, communities cannot attract businesses to locate in their area and face challenges in recruiting high quality employees.

More pointedly, excessive litigation and high medical liability premiums drive up employers' health care costs. A recent PricewaterhouseCoopers study found that seven percent of rising health care costs is due to litigation. Physicians and hospitals re-coup malpractice insurance costs through higher fees charged to patients and their health plans. In addition, to protect themselves against the prospect of being sued for medical negligence, physicians often adopt defensive tactics when rendering medical care and ordering services. This tendency to overly "err on the side of caution" when a third party pays the bill has come at the expense of both health plan dollars and patients receiving unnecessary services.

Furthermore, medical malpractice is not just about physicians - its ill effects cut across the health care sector. Hospitals need doctors to admit patients. Companies that manufacture medical devices and pharmaceuticals need physicians to use and prescribe their products. As physicians exit their profession due to the scarcity and high cost of medical liability coverage, the promise of the finest that medicine has to offer anywhere in the world will decline in turn, and fewer patients will realize the benefits of life-saving and life-enhancing innovation. We are gratified that your bill recognizes the impact of excessive litigation across the health sector by extending the scope of the bill's protections to health plan sponsors and medical innovators.

While some states have adopted various elements of medical liability reform, it is clear that action on a national level is urgently needed to ensure that residents of all states retain access to affordable, high quality medical care. Regrettably, in at least 21 states, courts have nullified important liability reforms, compelling the need for federal action. Even in states where these measures are in place, practitioners report difficulty accessing malpractice coverage as some national insurers cease underwriting policies for health care liability.

Your bill properly recognizes the important reforms some states have undertaken by preserving those limits, particularly by allowing subrogation of health care claims where permitted by state law. Subrogation ensures that health plans and sponsors – employers – can recover medical expenses related to medical injury, which will help contain health plan costs and ensure that the enrollee’s annual or lifetime benefit limits are not reached more quickly than necessary. We also support S. 607’s prohibition on a plaintiff’s double recovery of medical expenses by requiring an off set of any payments by the health plan for medical expenses.

The Chamber believes the “HEALTH Act” takes significant steps toward stabilizing the medical liability system and safeguarding patients’ access to care while helping to contain skyrocketing health care costs. It is time to ensure that Americans can obtain the health care they need and that doctors, nurses, hospitals and clinics be able to continue serving their communities across the country.

The U.S. Chamber and numerous state and local Chambers of Commerce stand ready to assist your efforts to enact the “HEALTH Act” as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten", written in a cursive style.

R. Bruce Josten